No. 1417.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SEVENTH CIRCUIT,

OCTOBER TERM, A. D. 1907.

NELSON THOMASSON, Jr., et al., *Appellants,* *vs.* **CHICAGO RAILWAYS COMPANY,** *Appellee.*	**In Equity.**

Before MR. JUSTICE BREWER, JUDGES BAKER and SEAMAN.

Argument of Charles H. Aldrich, Esq., in opposition to the petition of the Chicago Railways Company.

BARNARD & MILLER, PRINTERS, CHICAGO

THURSDAY, September 5, 1907.

ARGUMENT BY MR. ALDRICH.

May it please the Court, I do not appear here to discuss at all the fairness or unfairness of the proposed plan of reorganization, as applied to the different interests, in so far as they are represented in the several companies that are now to be merged or extinguished in the Chicago Railways Company. I want briefly to call your attention to facts which are a part of the history of this litigation, with a view of seeing whether there is any such extraordinary necessity for the court to depart from all precedents heretofore made; in fact, overturn all precedents that have heretofore been made, to meet what I shall urge upon this court to be only an imaginary necessity. Such necessity does not, in fact, exist.

You have been told that this creditors' suit was instituted in April, 1903; that was a suit based first upon judgments against three separate companies, the Union Traction Company, the West Chicago Street Railroad Company, and the North Chicago Street Railroad Company. Just prior to the institution of this suit, these notes evidencing the indebtedness which was merged in this judgment, had been issued. It is undisputed in this record, that the indebtedness at that time and for the purposes of a suit to put this property into the custody of the court, was an indebtedness of the Union Traction Company. There will be no controversy about that subject.

By the terms of the lease between the street railroad

companies and the Union Traction it was incumbent upon the Union Traction Company, which I will call the Traction Company hereafter, to pay all of the floating indebtedness of the underlying or lessor companies; and in accordance with that covenant, after it entered into possession, it did pay all of the floating indebtedness of these companies, and then after running these properties which had been, prior to that time, separate properties, under separate management, occupying the natural divisions of the city, the North and West sides of the city, it, for the purposes of this litigation, reissued these notes in the name of the underlying companies which it controlled by its dummies.

By the terms of the lease the Union Traction was to maintain the organization of the street railroad companies at an expense to itself not exceeding $3,000 a year. It therefore had the official control of the underlying companies, and by its representatives was managing the underlying companies. It put up 32,000 shares of West Chicago Street stock and 20,000 of North Chicago Street stock, to secure the performance of its covenants. Of course, when it allowed a judgment to be taken against its lessor, the West Chicago Street Railway or its other lessor, the North Chicago Street, it broke the covenants of its lease, and when receivers were appointed in this case, and there were three different sets of receivers, the possession that was taken under order of the court was simply of the interest of those companies in having the Union Traction lease carried out or forfeited.

Now as to the interest of the Union Traction Company, let me touch upon that just for a moment. It had forfeited its lease, and the court could have solved this

difficulty that it says it has labored so hard for four years to solve, and ends by giving the property over to a corporation that has not a dollar of paid up capital, and is going to have it paid with the proceeds of our property, by simply selling the collateral that the Union Traction Company had up to secure its defaulted covenants. That collateral at that time in the market was worth upwards of eighty dollars a share, and would have paid every dollar of this reissued or floating debt, including the judgment, and would also have made improvements that exceed in amount those made under this receivership. After paying this debt there would have been no longer any reason for a receivership of the West Chicago Street Railroad Company; it could have resumed the control and direction of its own affairs and taken up with the city itself the settlement of these political or legislative questions which have so exercised the court during these four years.

We would not now have had any street railroad situation if the defaulted covenants of the Union Traction Company had been enforced and the collateral, the security which had been put up to secure those covenants, had been sold.

Now what was done? Gentlemen, in the interests of the Union Traction Company were appointed receivers. The same gentleman who had been counsel of the Union Traction Company became the counsel of the receivers. Up to that time, what was the condition of the lessor companies? I am speaking now simply of the West Chicago Street.

The West Chicago Street up to that time had paid dividends of never less than six per cent. from the time of its organization, and in some instances higher than

that, from its earnings; and since the institution of this receivership it has always had an income in excess of the discharge of all of its liabilities, and I include in those liabilities the thirty-five per cent. that it had to pay to its lessor, the West Division, the discharge of all interest upon its mortgage debts, the taxes, etc.

JUSTICE BREWER: I think perhaps it would expedite matters and would be a little bit more satisfactory to me if we adjourn now until tomorrow.

Mr. ALDRICH: All right.

Whereupon an adjournment was taken until Friday, September 6, 1907, at 10 o'clock A. M.

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10 A. M., FRIDAY, September 6, 1907.

Court met pursuant to adjournment.

Whereupon Mr. Charles H. Aldrich continued his argument as follows:

May it please your Honors, at the hour of adjournment last night I had pointed out that the Union Traction interests in the West Chicago Street Railroad Company and the North Chicago Street Railroad Company are purely those of a tenant, and that prior to the time of the execution of that lease the West Chicago Street Railroad Company had always paid dividends and discharged all of its obligations. I wish to add that when the West Chicago Street Railroad Company came into the field, in 1886 or 1887, it found a horse railway on the West Side and 97 and a fraction miles of track. During the ten or twelve years, between the time when it commenced operations and executed the lease to the Union Traction Company, it had more than doubled the mileage existing on the West Side, to say nothing of the

Consolidated, the lines in black (referring to map), which had been constructed really with the money of the stockholders and with the credit of the West Chicago Street Railroad Company and the North Chicago Street Railroad Company, and the systems had been changed from horse railroads to cable and electric railroads during this period. So that during this twelve-year period the West Chicago Street Railroad Company had not alone been paying dividends to its stockholders and paying its creditors, but it had been extending its lines—I do not say commensurate, perhaps, with the growth of the city, but as rapidly, perhaps, as they could be extended.

In 1899 this lease was first made to the Union Traction Company, and it went into occupation of the premises. There had been no attempt at a unified system prior to that time, and the unification of the system, of which so much is made, consists of nothing except that the cars were routed over the tracks of the several companies irrespective of the ownership of those tracks, in some few instances.

> Justice BREWER: Was there not a common management?
>
> Mr. ALDRICH: There was a common management but the corporate existence of the other companies was maintained, and separate books of account were kept; there were separate officers, etc. In some respects the management and the legal departments were the same; in other respects they were not the same.

The Union Traction Company itself paid dividends. In April, 1903, when this receivership was inaugurated, it was nothing but a tenant and it had abundant collateral to discharge its covenants on the default which it made when it issued these notes and al-

lowed this judgment to be taken against the West Chicago Street Railroad Company. In an answer filed by the Illinois Trust & Savings Bank, in response to the demand to issue receivers' certificates, which should be put ahead of the mortgage indebtedness, the bank set out what we have set out in our petition, that the West Chicago Street Railroad Company was a solvent concern, able to discharge its obligations not only to its creditors but to the public, and that all it needed was the management of its own affairs. In view of the fact that these properties are to be permanently taken not only from the creditors of the West Chicago but from the stockholders and in a manner not in accordance with the contracts with the City—for the valuation is not made at all in accordance with terms prescribed by those ordinances upon which the system was established.

> Justice Brewer: These defendants are trustees and stockholders?
>
> Mr. Aldrich: Yes, there are stockholders who are trustees; and in this little sheet that was handed you yesterday purporting to set out the ownership of this Protective Committee, and in the publications made, to the effect that they only represent a few shares, I wish to say to the court that they represent, as they set forth in their petition, about $300,000 of the capital stock of the company, and that they are in a position to do more than the Chicago Railways Company is in position to do or has offered to do. It has not put up any money whatever except what the court proposes to give them to put up. It is seeking to take these properties without credit and without money, while this Protective Committee is ready and willing to pay the floating debt of the West Chicago Street Railroad Company and the judgment by which the West Chicago Street Railroad Company is in the hands of the receivers.

In other words, our properties are to be destroyed or given away. They give us nothing for it, because we

have not deposited our stock, and if you will examine this agreement you will see that we are not permitted to share in this property at all as a penalty for not depositing our stock; so that our property, because of the exercise of our judgment, is taken away from us if this plan is carried through, without judicial sale, and without any decree from which we may appeal, unless this be denominated a decree, and under circumstances which I will not describe and for the obligations of a company which has refused to discharge and failed to discharge its obligations to us. The 32,000 shares of stock which were deposited as collateral to the promises of that company are wiped out, that security is taken from us; you will find in this plan that the collateral has been taken away, and I am advised by a person who ought to know, although I am unable to state the fact positively, that in the stock deposited to carry the plan the 32,000 shares, which is our collateral, has been deposited under orders of the court.

Mr. GURLEY: That is not correct.

Mr. ALDRICH: I am glad to hear if it is not correct. There was another fund to which the West Chicago Street Railroad Company would have had a right to look had it been permitted to resume the charge of its own affairs upon the payment of this debt by the sale of this collateral for the defaults on the part of the Union Traction Company. The Union Traction Company was organized with twelve million preferred stock and twenty million common stock. The record in this case shows that the common stock was never paid for in any way; that 50 per cent. of common stock was given with the preferred stock to the subscribers of that and the balance of common stock was given away. That unpaid subscription, which is wiped out by this plan, if it is carried out, constituted a fund to which these stockholders and the corporation which was in control of these adverse interests had a right to look for the discharge of the defaulted covenants of this tenant.

One of the earliest things done in this receivership—and I will only speak by the record, if the court please—was to practically force an amendment to the contract relations which had existed between the West Chicago Street and the Union Traction Company. That action on the part of the court came to this court—one phase of it—for review, in a case reported in the 130th Federal, and this court held that the court of administration had charge of the property simply for one purpose, namely, to realize the amount of the indebtedness, with due regard to the rights of the public; it was not a part of the functions of the court to make an enlargement of the lease by which the Union Traction Company's rights were extended from 99 years to 999 years and the rental reduced. That was done by the aid of our collateral that was in the hands of a trustee and its vote, and the stockholders at that time were assured, they had all the assurances that a court could give them, that if they submitted to the deductions in rental made by the terms of that amended lease, of July 24, 1903, such reductions would rehabilitate the property, and would enable them to earn dividends; by the terms of the lease they were to participate in the net earnings prior to 1908, but after that time they were to have a guaranteed return again upon their stock investment. In addition to that, you will see by the third article of that amended lease that it was provided that the new franchises, when they were got, should be negotiated for the benefit of the lessor companies. You are told much in the brief—you will be told in the argument much about the supineness of these stockholders and bondholders who have sat by and paid no attention to the action of these men who were directors of our corporation, of these men who were managing it in the interest of the Union Traction Company,

as we contend, and who have made the situation which now exists; I ask, did we not have a right to rely upon the fact that they were our representatives?

By the amended lease, in which we had sacrificed our rights, we were assured that any new ordinance which was obtained should be for the benefit of our companies. We supposed they were our representatives; that they were working for us and for all equally and not for themselves; and we had no advice to the contrary until we discovered the contract of May 25, 1906. I want to call attention to two provisions of that contract.

Justice BREWER: What was that in?

Mr. ALDRICH: In the intervening petition of the Protective Committee, which is referred to in our answer and should be a part of this record. It has not been printed. It is also referred to in the testimony. I only want to read two clauses of this contract and then I want to ask the court by whom it was made and who were the parties who were dealing with this property and what duties they owed to the property under the circumstances, and to us.

The twelfth provision of that contract is "No step taken hereunder or ordinance granted to the new company or contract or arrangement made by said new company shall inure to the advantage of the leases and agreements between the North and the West Companies, respectively, and the Union Traction Company, or of the Union Traction Company or of the North Company or of the West Company, or of any lessor company of said North or West Company, or of any subsidiary, controlled or leased company of any of said corporations."

Judge BAKER: What contract is this?

Mr. ALDRICH: The contract signed by our trustees, directors of our company, four of them; signed also by attorneys who represented us and by these gentlemen who have prepared these plans and some of the receivers of the court below.

Judge BAKER: Was that the inception of it?

Mr. ALDRICH: It was the inception of the Chicago Railways Company.

Mr. GURLEY: It will be found in Volume 7, page 554.

Mr. ALDRICH: The 16th clause of this contract says, "Nothing in this agreement contained shall be taken as a recognition that any person or corporation has any interest in or is or shall be entitled to any allotment of stock or other securities or other compensation by reason of any interest in any of the properties above referred to."

There are other provisions of the same character in this contract. This contract looks to the acquisition of all of these properties by a new company that is to be organized by these men who, by law and, as I contend, by every principle of equity, were our trustees; who were paid by our money during all this period; the net earnings of our company August 31, 1906, were over $864,000 over and above all of the obligations to our landlords and to our creditors and they exceeded that sum for the fiscal year ending August 31, 1907. They entered into a contract to form a new company and absolve themselves from the obligations growing out of their personal relations to the West Chicago Company, and the Chicago Railways Company was born in pursuance to that contract.

We filed an intervening petition for this Protective Committee setting out this contract, which was the first signal of warning that we had. We had supposed, in accordance with the amended lease, to which I have referred, that these men were working for us; that the ordinances were to be taken, if there were any new ordinances, in the names of our companies, the landlords, and the third clause of the amended lease said that when so taken they should be subject to the lease during the

full term thereof. Under these circumstances—and when we got information of that contract we tendered a petition to the court asking that this committee be allowed to become a party to the litigation. We did not know, if the court please, that the court of administration was a party to this contract; we had no advices of that kind. We assumed that while these gentlemen, constituting a majority of the board of directors of the corporation in which we had stock, had contracted in this way, that the court itself was not a party to that contract; we tendered to the court information concerning this contract and we set up that it was time for a protective committee to be allowed to come in and intervene in this case in order that we might protect our rights; and we were denied the right to intervene, and an appeal from such action by the court below is pending here. In behalf of the holders of receivers' certificates we set up this contract and filed an independent bill, and they are here as appellants in this case. That bill has not yet been heard. In that contract there is a provision that the court of administration shall have the right to appoint a director of this Chicago Railways Company. The other directors were, as I have said, a majority of the directors of our company, and participating in it were the attorneys of our company, who were paid by our money and the receivers appointed by the court below. The court appointed a director of this Chicago Railways Company and thereby made itself, as we contend, and we have now established that fact upon the record, a party to this contract. We have the testimony here of one of the attorneys, who has been paid at least $18,000 a year from the proceeds and earnings of this property during the period of administration, that from the outset the court was advised about these matters and had all of them under his consideration and was a party thereto.

It is established here that the genesis of this contract is probably with the court and that he was a party to the principles and the purposes of this contract from the beginning. I will stop now to read a little testimony before I announce a principle that is larger than any principle in this case and is a controlling principle. At page 386 of Volume 3 of this record, Mr. Gurley testifies as follows:

> "Q. When was the first time you had any knowledge with regard to the Chicago Railways Company being selected as the company to accept this new ordinance?
>
> A. Well, I knew it was the Chicago Railways Company or some other company to be organized from the start."

At page 388 he states:

> "I was counsel at that time for the receivers, but it is true also that during all the time of that negotiation I was performing the same work for those receivers that I always had, and I never received a penny of compensation from the receivers or anybody else for the work.
>
> Q. You mean for the work with regard to the Chicago City Railways Company?
>
> A. With regard to the negotiations for that ordinance.
>
> Mr. CRAWFORD: The Railways Company I mean.
>
> A. Yes."

On page 390 Mr. Gurley says:

> "We were insistent that this ordinance should run to an outside company absolutely and entirely, which would guarantee, within a given time, to obtain title to all the properties then operated by the receivers of the Chicago Union Traction Company. *Mr. Fisher was insistent that an avenue should be left open by way of a reorganization plan that should be made a part of the ordinance, whereby the existing interests ultimately would be recognized according to that plan.*"

You notice that this contract provided that no one should have any right, by reason of ownership, whether a stockholder or a bondholder, or as creditor of any of these companies, in the Chicago Railways Company. It seems to have been thought that it was not a matter of right. It would be a matter of grace. See if we have anything as a matter of grace according to Mr. Gurley's testimony.

On page 393 we find the following:

> "Q. Well, the only pay you got for your attendance before the transportation committee and the people in New York was your regular salary in behalf of the receivers?
>
> A. Never got any pay for that work. I got a regular salary from the receivers and I did exactly the same work for the receivers during that time that I did before, and I have done since, and I had to work days, nights and Sundays to get it done.
>
> Q. And your expense accounts were vouchered?"

I want the court to note this: * * * "With the understanding, Mr. Crawford, however, in the end that all those items of every kind will be ultimately paid by the Chicago Railways Company." * * * "There would be a skeleton copy of an ordinance, not the skeleton copy referred to this morning, and many amendments would be made, many changes would be made, and then that would be printed again. That expense was borne by the receivers, although then it was only to some extent; that is the Chicago Railways Company paid part of it, and when it was not available, as a matter of mere accommodation the receivers paid it, but with the understanding always, Mr. Crawford, that ultimately that matter would be settled." In other words, a contract by which they were making temporary loans to the Chicago Railways Company, which was taking the property away from its owners seems to have been in force.

"Q. Do I understand that there was also an understanding that the Chicago Railways Company was to pay you for your services in connection with that matter?

A. Surely there was.

Q. What?

A. Surely there was.

Q. With whom of the Chicago Railways Company?

A. * * * Well, with Mr. Govin and Mr. Blair. I certainly intend, if the Chicago Railways Company is ever organized, to put in a claim for my services."

We have then a case where a private corporation has been organized to whom a gift of this property can be made. It has not been required, as is the ordinary contractor in a simple contract with any ordinary municipality, to give evidence of strength by bond or deposit. Its capital is limited to $100,000, and that by a provision put in at a late date in this plan of reorganization is to be paid by the money belonging to this trust; and we have the men who were trustees of our property in the corporation in which we hold stock, assuming relations to the property that I insist are utterly inconsistent with the trust; the men whom we were paying to look after that interest, relying upon the covenants of the amended lease, which had been forced upon us practically by the court; the solicitors whom we had been paying are all parties, and we are assured in the last sentence which I have read from Mr. Gurley's testimony that during all of this time when we were paying even the cost of printing the ordinance by which our property was to be taken Mr. Blair, one of our directors, was arranging with Mr. Gurley, one of our solicitors, that when this property was given over to the Chicago Railways Company he, Mr. Blair, as an officer of the Chicago Railways Company, would see him paid.

This testimony shows that during this period when this ordinance in the name of the Chicago Railways Company was being negotiated contrary to the provisions upon which we rely in this amended lease, to a new company, without capital and without credit, by our paid agents, that the court employed counsel, also paid from our funds, to assist in those negotiations, who appeared constantly before the transportation committee, and as Mr. Gurley testifies he and this counsel of the court insisted that the ordinance must run to this new company. I do not need to call attention to the emphatic language of the Supreme Court of the United States in *Michoud* v. *Girod,* 4th Howard, which says that people occupying these relations cannot be permitted to put themselves in such relation to the property of which they are trustees; nor to the declaration of the learned and eloquent judge in that case, that the courts will not stop to investigate whether or not the transaction is fair; whether or not it is for the interest of the *cestui que trust,* but on the well established grounds of public policy, without investigation, will condemn it as absolutely void and fraudulent.

Can this court, I ask in all deference, afford to say that it is competent, in the extended exercise of the powers of a chancellor, to create a corporation to whom he shall transfer property that is now yielding a gross income of more than eleven million dollars, with only $100,000 capital stock, and that paid with our money, employ attorneys to bring about that result; have the trustees, upon whom we have relied, participate in that organization and in that transfer, and likewise the court's receivers? and then say that because the Chicago traction question ought to be settled; because there is a

public necessity that something should be done here to get better public service, that that kind of conduct will be condoned, and that kind of a transaction sustained? No one will go further than I will in the assertion of the powers of a court of chancery; no one has more eloquently or ably stated the character of these powers than the presiding justice in the court I am now addressing; but I submit that no case can be found in the books, and I trust no case will ever be made by this court that will say that any necessity relating to mere property interests shall override these great questions of public policy by which men who are trustees remain trustees to the end; men who, as solicitors, directors or receivers, have duties to perform, must remain mindful of their trust duties to the end; and I say that it would be better that every dollar, every piece of property belonging to these railroad companies, should go as Mr. Gurley said in his argument before the arbitration, they were in danger of going, to the junk heap; every dollar of interest of my clients and all these mortgagees had better be wiped out than for this court to say that it is competent for trustees to so conduct themselves or that a chancellor can properly connect himself with such a scheme. I can not think that such a result will ever be reached.

Now it may be said that everyone has an opportunity to come in here and participate. I deny that. There is not any participation. How? Everyone who has a part in the litigation or is interested by reason of ownership in the subject-matter of the litigation has a right to the exercise of judicial powers. I do not understand that the Third Article of the Constitution of the Government under which you sit gives any jurisdiction except with reference to controversies, with the requisite diversity

of citizenship and other subject-matters that are described in that article.

There was a controversy here, then; I do not care whether you consider it the controversy raised by the amended and supplemental bill of the Guaranty Trust Company or whether you consider it the controversy raised by this creation of the court of administration, the Chicago Railways Company, when it filed its petition to have this property turned over to it; it makes no difference to me, for the principle for which I am contending is applicable to both controversies; both the amended and supplemental bill and the petition of the Chicago Railways Company raised issues that called for the exercise of judicial powers. Now I ask this court, —and this is another branch of the same question,— whether or not if, as Mr. Gurley testifies and this record shows, at every step of this proceeding the court of administration was a party to the proceeding, if he had employed counsel for the purpose of bringing about this result, if he was constantly advised with reference to how this corporation should have its birth and how it should be clothed, whether or not when the Chicago Railways Company filed its petition to turn over the property of all these companies to it, and was opposed by all these gentlemen representing the trust companies and the mortgagees, by us as stockholders, whether or not by reason of his prior relations to the petitioner he had not necessarily pre-judged the cause? If he had organized the Chicago Railways Company, if he had authorized his receivers, every one of them, to become parties to it, if he had appointed counsel and named a director for it, and if it was possessed of a franchise of the City of Chicago, through the efforts of himself and his counsel and the other paid attorneys for this trust, was he

not a party to the Chicago Railways Company, and could he, under the decisions of the court of which you are an honored member, the Moran-Dillingham case and other cases of that character—could he have been both judge and party? I say he disqualified himself as a judge, and as you set aside the judgment of Judge Pardee in that case, although there was no suggestion of impropriety except the mere fact that he had been related to the controversy before, I believe you will set aside this order. I submit this is no judgment, because the court was so related to one party to the controversy that he was disqualified to exercise judicial functions.

But that is not all. Preceding this was the question as to who could come in and how—only those who deposited and acceded to the terms of this plan wrought out under such circumstances and with such motives; as to us and other stockholders who are not represented by trustees, unless we deposit we get nothing, and we are denied the right to become parties to the litigation so as to protect our interests. There is no clause in any of the trust deeds that authorizes a trustee to represent the bondholders in any such contingency, and your court has held that you are to look to the terms of the trust deed to ascertain what the relations of the trustees and bondholders are. So there is not a bondholder before this court, in any proper sense; but they cannot participate unless they deposit. When the court acted, as counsel in the organization of this company—that is counsel by consultation with him—and sought, through having himself named arbitrator, to control the formation of the plan which as judge he would approve, I submit that such action was in effect, perhaps not in the letter, a violation of the federal statute. There is here a question of public policy overshadowing the question of the dispo-

sition of the rights of the parties and the settlement of the relations of these several private corporations to the city; and you cannot affirm this judgment unless you are prepared to say that it is competent for the chancellor thus to relate himself to private enterprises; unless you are prepared to say that he may thus participate in all these pre-arrangements looking to the giving away of the property in his court to people who occupy the position of trustees and to the exclusion, without judicial sale, of the people who, in the exercise of their judgment, would rather have a franchise that runs until the city has purchased, that cannot be terminated until the city has given six months' notice of its intention to purchase, and each party has appointed an appraiser, and the two, if they disagree, appoint a third, and the city pays, in cash, at the end of six months, before entry, the total amount of the value of the property as thus found.

I do not have to go beyond the decisions of the Supreme Court in saying that trustees and solicitors have no right to deal with the subject-matter of litigation in that way, that it is a constructive fraud—I am not now saying anything about actual fraud—it is a constructive fraud. The courts, being possessed of undisputed evidence of such facts, stop right there and say that it is not consistent with public policy that such conduct should be tolerated. There is no dispute that the court employed counsel who participated in all these proceedings. So that it must be, when the Chicago Railways petition was filed, that the judicial response to that petition was known. It could not be otherwise. It does not rest upon statutes—this principle that a man shall not be a judge in his own case; the principle that a man shall not, who has been related to one of the parties or participated in the subject-matter of a controversy, decide that con-

troversy. And how insignificant, I submit, is the ultimate outcome of these questions between the City of Chicago and these private corporations, charged with public duties which we assume the city is able to make them perform and which, in the case of the West Chicago Street Railroad Company, it is able and willing to perform if it is given an opportunity.

The court will recollect, as was pointed out in a recent periodical, that de Tocqueville, seventy-five years ago, spoke of the American Bar as the greatest force in the American commonwealth; that Mr. Brice, when he wrote his work upon that subject, said that the influence of the bar was declining. It was said that heretofore lawyers had clients, and now clients have lawyers, and that instead of clients going to lawyers' offices for consultation the lawyers go to the corporations or the client's office; but it has never before been said that clients had judges, and I submit that when this Chicago Railways Company filed that petition it must have known —it could not have been otherwise, or all this preparation and expenditure would have been unnecessary—what the judicial response to that petition would be. On the grounds of public policy, therefore, the order of the court below should be set aside.

Justice Brewer: Assume, for the purpose of my thought, that there has been all the misconduct that you suggest, that a decree had been entered and an order made contemplating the rearrangement and unifying of these various interests; if it appears to this court that notwithstanding that conduct the interests of all the parties in this litigation would be promoted by having the scheme of reorganization carried out, would it be just or right for this court to say, "we are of the opinion that it is best that such a reorganization be made, but we won't permit

it because of the misconduct in the proceedings of the lower court?''

Mr. ALDRICH: I answer that unhesitatingly, yes. We will show you before we get through that you cannot say that, but on the grounds I am now discussing I submit that the general esteem in which the bar and the judiciary is held is of much more importance than can be the mere ultimate disposition of property rights.

Justice BREWER: Is there not a way in which such misconduct can be punished?

Mr. ALDRICH: There is not, and there is no way to protect our property rights.

Justice BREWER: I put it upon the assumption that the reorganization scheme protects your rights.

Mr. ALDRICH: It does not protect our rights. I have called attention to the fact that only those who have deposited their stock can come into the reorganization. We have not deposited. We know the money is ready to make the West Chicago and its underlying lines as successful as it has always been in the past, indeed as it has been during this period. Its franchises have not expired. The broken or dotted lines show expired franchises on the North Side; the Union Traction interests which are here protected should have been sacrificed, and we would have had adequate protection in our franchise rights under your Cleveland decision. We could take hold, or these companies could, through the stockholders, and arrange with the City of Chicago, as we believe, if there were nobody paid by our money, doing as Mr. Gurley said, insisting that the franchises should run to some new company. I do not believe the City of Chicago has any desire to do injustice. It wants service. We do not want to come into this arrangement; we cannot, if you approve the gift of this property; we are out of it, and I am glad to trust your Honor's decision in 136th U. S., that notwithstanding the character of the service with which these corporations are charged, there is the same right in the lien as there would be in the case of private property; there is the same right in our stock that there would be in the case of private property.

Your Honors have not forgotten that able discussion by the Justices of the Supreme Court of New Hampshire, where the State of New Hampshire attempted to buy the Concord Road at less than its value, under an amendment to its charter provisions in that respect, and where, citing the decisions of your court and other decisions, the opinions of the Justices held that a man's property in the shape of corporate stocks or bonds is just as sacred against judicial or legislative encroachment as his farm or city residence. You have repeatedly said the same thing in applying the provisions of the Fourteenth Amendment. There is no way, I submit, except through judicial sale, to take away from these stockholders and bondholders their rights.

This plan was arranged. Nobody saw the plan, nobody had an opportunity to offer any other plan for the court's consideration; he did not ask for any other plan. Nobody saw it, so far as I am advised, until the 15th of July, or within a few days after it was carried into a judicial decree. As long as the receivers of the court are in the enjoyment of the income of the property there cannot be a default of these mortgages; and if the true history of this administration is ever written it will be shown to have been one of the most extravagant and expensive receiverships that has ever marked the judicial history of such receiverships in the United States courts. They propose to give away fifty-five per cent. of the net income to the city from February 1st last. Necessarily the bondholders who do not come in after that will have no provision for their mortgages. They are going to compel a sale under those circumstances, and they have so placed themselves, with the co-operation of the court of administration, that the Chicago Railways Company is the only possible purchaser. That is not what judi-

cial sales mean. The courts, in discussing the broad questions of public policy, have heretofore condemned any sort of arrangement looking to the suppression of bidding at public sales. If in the ordinary course of judicial administration this property had been brought to the auction block by receivers who were receiving the income from the property, there would have been an opportunity for others to prepare plans of reorganization, for others to come forward and prepare to become purchasers of this property; but if it is going to be given away to a corporation without assets, under the circumstances here disclosed, there can be no such opportunity. That is one advantage that is given to the Chicago Railways Company. It does not stop there. In this arrangement, contemplated from the first, by which one of our directors was making contracts with our solicitor, the chosen man at the head of the legal force to guard and carry out the provisions of the amended lease —when we come to a reorganization plan, before any other of these people can participate in it, we find there is an item of $1,969,000 set aside to pay among other things the legal expenses and expenses of organization.

I submit, if the court please, from these considerations of public policy there should be no approval of this plan, and that you cannot, when you come to examine it, find that the court below was capable of doing any judicial act with reference thereto or had any power to thus displace vested interests.

It has been arranged that Mr. Crawford, on our side, will reply to the arguments of opposing counsel. This closes, as I understand, the arguments on our side for the present.

I thank your Honors for your attention.